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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/872,133	06/01/2001	Tim Clark	VTI-P2702	1924

21259 7590 04/16/2004

J MARK HOLLAND & ASSOCIATES  
3 CIVIC PLAZA SUITE 210  
NEWPORT BEACH, CA 92660

EXAMINER
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HARTMAN JR, RONALD D

ART UNIT	PAPER NUMBER
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2121

DATE MAILED: 04/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/872,133

Applicant(s)

CLARK ET AL.

Examiner

Ronald D Hartman Jr.

Art Unit

2121

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) \_\_\_\_\_ is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-47 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

1. Claims 1-47 are presented for examination.
2. A telephone call was made to Mark A. Pellegrini on March 26, 2004 to request an oral election to the restriction requirement below, but did not result in an election being made.
3. Applicant is advised that the reply to this requirement, in order to be complete, must include an election of the invention to be examined, even though the requirement may be traversed (37 CFR 1.143).
4. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(I).

***Election/Restrictions***

5. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-18, 22-29 and 34-38 are all directed towards a monitoring/communication system utilizing a web based network for

monitoring or communicating with a remote device; classified in class 702, subclass 1+ and 127+ or in class 709, subclass 200+. It is also noted that elements that appear in the preamble are not given patentable weight (MPEP 2111.02)

- II. Claims 19-21, 30-33 and 39-47 are all directed towards a remote control system whereby a device is controlled remotely, classified in class 700, subclass 65.

6. The inventions are distinct, each from each other because of the following reasons: Inventions I and II are related as sub combinations disclosed as usable together in a single combination. The sub combinations are distinct from each other if they are shown to be separately usable. In the instant case, Invention I has separate utility such as in a system lacking actual control of the remotely located device; that is, in a system that only is used for monitoring or simply communicating monitored values to a remotely located device or location. Invention II has separate utility such as in a system lacking a monitoring feature whereby the remote device is controlled based on a control technique and is controlled regardless of a remote monitoring aspect or feature. See MPEP 806.05(d).

7. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classifications, restriction for examination purposes as indicated is proper.

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8. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, and vice versa, restriction for examination purposes as indicated is proper.

***Conclusion***

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronald D Hartman Jr. whose telephone number is 703-308-7001. The examiner can normally be reached on Mon. – Fri., 11:30 am – 8:00 pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Knight can be reached at 703-308-3179. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**Anthony Knight**  
**Supervisory Patent Examiner**  
**Group 3600**

Ronald D Hartman Jr.  
Examiner  
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